

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

Bail Appl..No. 6007 of 2007()

[CR NO.37/2007 OF THIRUPURAM EXCISE RANGE]

: PETITIONER/ACCUSED

VARGHESE @ MADHAVA S/O YOVEL,
RESIDING AT SABARIMUTTOM THALIYAMVILAKOM VEEDU,
AVANAKUZHI, ATHIYANNOOR VILLAGE, NEYYATTINKARA.

BY ADV. SRI.G.SUDHEER

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 03/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J.

B.A.No.6007 of 2007

Dated this the 3rd day of October 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under the Kerala Abkari Act. He was allegedly found to be in possession of 5 litres of arrack on 18/8/2007. He was not arrested on that day. Investigation is in progress. The petitioner apprehends imminent arrest. The learned Public Prosecutor points out that the petitioner has involved in two other earlier crimes also under the Kerala Abkari Act.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He prays that directions under Section 438 Cr.P.C may be issued in favour of the petitioner.

3. The learned Public Prosecutor submits that all contemporaneous documents including seizure mahazer and occurrence report show the name of the petitioner as the person who had kept possession of the article and run away from the scene of the crime. There is absolutely no reason to doubt or suspect the acceptability of the materials collected so far. The

antecedents of the petitioner also will have to be taken into reckoning, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I do not find any circumstances which would justify invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioners must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

5. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy//

PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007